

Nos. 1-12-0997 & 1-12-3447

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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IN RE THE PARENTAGE OF:	)	
	)	
LAVELLE L. SMITH,	)	Appeal from
	)	the Circuit Court
Petitioner-Appellee,	)	of Cook County
	)	
v.	)	No. 04 D 79978
	)	
ALFRED W. DINWIDDIE,	)	Honorable
	)	Martha A. Mills,
Respondent-Appellant.	)	Judge Presiding.
	)	

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PRESIDING JUSTICE CONNORS delivered the judgment of the court.  
Justice Delort concurred in the judgment; Justice Cunningham specially concurred  
in part and dissented in part.

**ORDER**

**Held:** Trial court did not abuse its discretion in modifying the child support award to reflect 20% of respondent's current salary, as well as 20% of his bonuses, to be capped at \$50,000. Trial court also did not abuse its discretion in sanctioning respondent.

¶ 1 This appeal was brought by respondent Alfred Dinwiddie, from two trial court orders: one that modified the child support he owed to petitioner Lavelle Smith, and one that found him in contempt of court.

¶ 2 I. BACKGROUND

¶ 3 The parties to this appeal were never married. On June 23, 2006, an agreed order was entered between the parties stipulating to joint legal custody of Alec, their one minor son. Alec was to reside with Smith. The court set child support payments at \$1125 per month, which represented 20% of respondent's yearly income, which was \$100,000 at the time. Respondent was also to pay Smith 20% of any net bonus or commission he received within seven days of payment. Respondent was also to provide Smith a copy of his tax return and all attachments by April 15 of each year of child support obligation. The parties agreed that respondent would carry medical insurance on Alec, and the parties would split uncovered medical and related expenses 50-50. The parties agreed to split childcare expenses, summer camp expenses, and agreed-upon extracurricular activities, 50-50.

¶ 4 On March 11, 2010, four years later, respondent filed a petition to modify the terms and provisions of the June 23, 2006 child support order. In support of this petition, respondent claimed that at the time of the original child support order, he had limited bonus and/or commission income. Since then, his income "has grown exponentially" and he "may likely have gross bonus income of as much as \$400,000.00 gross [*sic*]." Respondent contended that requiring him to pay 20% of his net bonus income would result in a windfall to Smith and be grossly inequitable. He asked the court to modify the child support order by setting aside all

requirements that he pay 20% of net bonus income to Smith.

¶ 5 Smith moved to strike and dismiss respondent's motion to modify, arguing that respondent failed to allege sufficient facts entitling him to relief, as there were no supporting facts to indicate that paying Smith 20% of his bonus income would result in a windfall to Smith. Smith also contended that respondent failed to support his motion with the required documentation (income tax returns, pay stubs, etc.).

¶ 6 Thereafter on May 20, 2010, Smith filed her own petition for modification of child support. In her petition, Smith argued that since the original child custody order, there had been a substantial change in circumstances, namely that respondent was now earning substantially greater sums than what he earned at the time of the entry of the order. Smith contended that since the entry of the original order, the costs in raising Alec had substantially increased due to the child's age and rising costs associated with raising the child, including the costs of Alec's activities, his food and clothing, his school-related expenses including tuition, transportation to school, and other costs with respect to housing. Smith asked the court to modify the child support order to increase respondent's child support obligation to at least 20% of his net income.

¶ 7 Several continuances were granted in this case. Then on September 28, 2010, Smith filed an emergency two-count petition for a finding of indirect civil contempt against respondent. In her emergency petition, Smith argued that on February 26, 2010, respondent received a bonus from his employer in the sum of \$400,000 and did not tender 20% of that check to Smith within seven days. Instead, respondent filed the March 11, 2010, petition to modify, which remains pending. Based on that information, Smith alleged that respondent had failed to comply with the

original child custody order and should be held in contempt, should be sanctioned, and should be required to pay.

¶ 8 On September 30, 2010, the trial court entered an order directing respondent to pay Smith's reasonable and necessary attorneys' fees incurred in the adjudication of Smith's motion to strike and dismiss respondent's petition to modify. The trial court also ordered respondent to tender his disclosure statement by October 1, 2010. The trial court gave respondent 21 days to respond to Smith's emergency two-count petition for civil contempt, and gave Smith 21 days to respond to respondent's petition to modify.

¶ 9 On November 9, 2010, Smith filed a motion to determine reasonable attorneys' fees, arguing that respondent picked four billing entries at random and offering a nominal sum to satisfy the court ordered attorneys' fees.

¶ 10 Also on November 9, 2010, Smith filed a petition for a finding of indirect civil contempt against respondent. She argued that the minor child was attending Ivy League Tutoring, which began on August 23, 2010. Prior to enrollment, Smith discussed the program with respondent, and the parties agreed to enroll him. At that time, respondent gave Smith \$225, which represented 50% of the required deposit. As of November 1, 2010, the minor child had attended eleven tutoring sessions, which cost \$1650, which Smith paid on her own. Smith also noted other instances in which respondent had not paid his portion of the cost: the minor's laptop, the cost of a school field trip, soccer lessons, and piano lessons.

¶ 11 On December 27, 2010, respondent filed a petition for rule to show cause, contending that Smith was given 28 days to comply with his notice to produce, and she did not do so.

Respondent also filed a motion to compel deposition, arguing that Smith did not show up for her scheduled discovery deposition on September 8, 2010.

¶ 12 Several more continuances occurred in this case. On April 13, 2011, respondent filed a motion for substitution of judges, arguing that the current trial judge had "not ruled on any substantial issue in this case to date." The motion was granted.

¶ 13 On June 14, 2011, the court noted in an order that Smith's counsel represented that all of Smith's living expenses as set forth on her disclosure statement were satisfied by her current husband, Michael Hall, and therefore the subpoena to depose Michael Hall was quashed.

¶ 14 Several more petitions for contempt were filed by both parties for failing to respond to certain discovery requests in the time permitted.

¶ 15 On November 11, 2011, a hearing was held on respondent's petition to modify child support (which had been filed March 11, 2010), and Smith's motion for modification of child support (which had been filed on May 20, 2010). There is no hearing transcript in the record, but a bystander's report was certified on September 10, 2012. The bystander's report indicated that the parties had stipulated that Smith's husband, Michael Hall, pays for the household expenses as set forth in Smith's Disclosure Statements. It reiterated the terms of the June 23, 2006, parentage agreement. The report also stated that Smith testified that in 2005 she was unmarried and earning approximately \$30,000 a year as a school teacher. Since 2006, she had foregone all employment and has acted as a homemaker. Smith testified that she married Hall in January of 2010, and that they had one child together. She has resided with Hall since November 2008. Smith testified that she had been receiving the monthly child support from respondent which has

been deposited into a Comerica Bank account from which only she makes withdrawals.

¶ 16 Respondent testified that he is employed and that his salary has increased since 2006. His gross annual salary in 2006 was \$100,000 and his gross annual salary as of April 2011 was \$175,000. His bonus income has fluctuated in each year since 2006. He paid Smith 20% of his bonus income through 2009, but on March 11, 2010, filed a motion to modify his child support obligation. Respondent testified that he failed to tender his completed Federal and State tax returns, his W-2 forms, and copies of his bonus checks pursuant to the judgment for dissolution of marriage for the years 2007, 2008, 2009, 2010, and 2011.

¶ 17 The trial court's order, dated November 17, 2011, is in the record. In that order, the trial court noted that there were several other motions pending, all of which were to be heard on November 10, 2011, but the parties underestimated the time required to hear them. The trial court noted that "some testimony that the court would like to have heard with respect to the two pleadings that were heard, was not complete."

¶ 18 In its November 17, 2011, order, the trial court noted that respondent had subpoenaed Smith's husband, Michael Hall, as a trial witness and a motion to quash was presented at trial. There was a stipulation of the parties preceding the trial that Hall paid all of the household expenses identified in the Financial Disclosure affidavit provided. Respondent argued that "household expenses" included the expenses of the minor child, and Smith argued that they did not. The trial court noted that the stipulation is ambiguous on that point "though child expenses is one of the miscellaneous categories of expenses under the caption 'Statement of Monthly Living Expenses.' " The trial court found that the respondent's "gross income" had increased from

\$100,000 in 2006 to \$175,000 at the present time. The court further found that in 2007, respondent received a bonus in the amount of \$118,000, in 2008 a bonus of \$39,000, in 2009 a bonus of \$130,000, in 2010 a bonus of \$400,000, and in 2011, a bonus of \$150,000. Respondent paid 20% of the bonuses to Smith up until the \$400,000 bonus. Following receipt of that bonus, respondent filed a motion to modify his child support by removing his bonus from the income calculation.

¶ 19 The trial court found that the change in respondent's base income, together with the changes in his bonus, constituted a change in circumstances that justified both parties' requests for modification of child support.

¶ 20 The trial court noted that Smith, who was single and working at the time of the June 23, 2006 agreed order is now married and not working. "Her spouse has, and the parties do not dispute, a significant income and pays all of the household expenses." The trial court noted that Smith has her own checking account into which respondent's child support checks are deposited. That account is not used, however, solely for child support matters related to Alec. The trial court noted that the money was also used for matters related to Smith personally, and her other child by her new husband. The trial court further noted that "Smith's testimony on financial matters lacked some degree of credibility."

¶ 21 The trial court noted that in her most recent financial disclosure affidavit, Smith claimed total monthly expenses for Alec of \$3840.50, which included private school tuition and costs, which respondent did not agree to and which Smith agreed to pay as she wanted Alec in a private school. The monthly costs of Alec, minus tuition, were \$2194.50, half of which would be

\$1097.25.

¶ 22 The trial court granted Smith's motion to modify the child support, increasing the amount respondent owed to 20% of his current yearly income, to date back to the date of the motion to modify. The court also ordered that respondent's petition to modify by excluding 20% of his yearly bonus, was granted as the amount of child support that he would be paying exceeds half of the child-related expenses. The court noted that in most cases, child-related expenses include a portion of the underlying costs of a household, but that in this case "it is provided at not cost to Smith, and would be so provided without regard to this minor child."

¶ 23 On December 19, 2011, Smith filed a motion to reconsider the November 17, 2011, order. In that motion, Smith argued that the trial court awarded respondent a downward deviation without any findings as required by statute. Smith argued that based upon the court's order, which removed respondent's annual bonus income, respondent would only be paying 11% of his net income for child support. Smith contended that the trial court failed to consider the cost of private school tuition as a child related cost, and did not properly consider the incremental cost of the minor child to the general household costs of Smith, her husband, and another child. Smith further argued that by considering Michael Hall's financial resources, it put the burden to support a child on a non-party, and that in Illinois the resources of a spouse can only be considered in a limited manner.

¶ 24 On March 6, 2012, the trial court ruled on Smith's motion to reconsider. It noted again that the testimony of Smith as to financial matters was "not entirely credible." It then reiterated that respondent was not required, given the parties' prior agreement, to contribute to the cost of



the private school education and it would not be considered for child support purposes.

¶ 25 As to the financial wherewithal of Smith's husband, the trial court noted that the parties agreed that Smith's husband "paid for all of the household expenses," and that the details of his means of paying were not part of the agreement, but that he had "substantial means." The trial court agreed with Smith that there "is some increment" to a household's expenses relating to every extra person in the household, but that it is not necessarily a large increment. The trial court found that while a spouse's income is not considered available to pay support for a child that is not his, it is not completely irrelevant to the overall consideration of what is necessary or desirable for the benefit of the child, or what the other parent is able to contribute.

¶ 26 The trial court reiterated that respondent argued that payment of 20% of his bonuses, in addition to his child support obligation, would result in a windfall to Smith, and should be removed from the calculation. Smith argued that respondent's payments should be 20% of his total net income, including bonuses.

¶ 27 The trial court noted that for purposes of its order, the monthly expenses of Alec amounted to about \$2200 per month, half of which would be \$1100 per month, which would amount to \$13,200 per year.

¶ 28 The order states that the court "has been informed by the parties that the child support which will be ordered when the final order is completed, will be \$1950 a month, based on [respondent's] base salary, not including bonuses," which would amount to \$23,400 a year in child support payments. The trial court then went into the following discussion:

"Assuming [respondent] is paying \$1950 per month or \$23,400 per year,

and that he received another bonus of \$400,000, he would be paying (assuming for the sake of this computation only a tax rate of 33% on the bonus) annual child support in the amount of \$77,000 (23,000 plus 53,600). That would exceed half of the monthly cost sworn to by Smith by \$63,800. If the bonus was \$100,000 the yearly payment would be \$36,850 (exceeding half of the cost by \$22,650), if \$50,000, \$30,150 (exceeding half of the cost by \$16,950), and if the bonus was not computed in, \$23,450 (exceeding half of the cost by \$10,250)."

¶ 29 The trial made the following findings:

"The court finds that strict guideline support is inappropriate considering the reasonable needs of the child as set forth by Smith. In addition, Smith, the custodial parent, has no financial needs apart from those met by her current spouse and a small amount of income she earns. She testified that she is voluntarily unemployed. The court finds that the standard of living the child might have had if the parties were married to be largely irrelevant both because the parties never were married and also because the standard of living of the two parents is quite similar. There is no relevant evidence as to the effect slightly more or less money in terms of support would have on the physical and emotional condition of the child or his educational needs, particularly as he is well provided for by both parents at the current time. There is no testimony as to the financial needs and resources of [respondent] except as to his income."

¶ 30 The court then held that respondent's motion to modify was granted in part, and that respondent "shall pay Smith 20% of his net bonus, capped at \$50,000."

¶ 31 On July 17, 2012, a contempt hearing was held on Smith's emergency two-count petition of indirect civil contempt relating to respondent's 2009 bonus (filed September 28, 2010), Smith's emergency petition for finding of indirect civil contempt for failure to timely respond to discovery (filed July 29, 2011), Smith's two-count petition for finding of indirect civil contempt relating respondent's 2010 bonus and failure to timely respond to discovery requests (filed August 23, 2011). There are no transcripts in the record from the July 17, 2012 hearing.

¶ 32 On August 6, 2012, the trial court entered an order on the July 17 hearing. It noted that on February 26, 2010, respondent received a bonus for the year 2009 in the amount of \$400,000. He neither disclosed the amount by sending Smith a copy of his check, nor paid 20% of that amount, both of which would have been due by March 5, 2010, per the original agreed order of child support. He did file a motion to modify his support obligation on March 11, 2010, which stated that he "may likely" have gross bonus income of as much as \$400,000. The court found respondent in indirect civil contempt of court for willfully failing and refusing to pay that amount to date. The court found that respondent could purge himself of contempt by paying the amounts owed, plus interest, within 14 days.

¶ 33 Respondent now appeals from both the November 17, 2011, order, and the March 6, 2012, order. Respondent also appeals from the August 6, 2012, and October 19, 2012, orders holding him in indirect civil contempt and imposing discovery sanctions.

¶ 34

## II. ANALYSIS

¶ 35 Modification of Child Support

¶ 36 Respondent's first argument on appeal is that the trial court erred in granting Smith's motion for modification of child support on November 17, 2011. Respondent contends that there was not a change in circumstances since the child support was set in 2006, and that if anything, the financial needs of the child had decreased since then. Smith did not file a brief in response.

¶ 37 Section 505(a)(1) of the Illinois Marriage and Dissolution of Marriage Act (Act) sets out guidelines for determining the amount of child support to be paid by a supporting parent. 750 ILCS 5/505(a)(1) (West 2010). These guidelines create a rebuttable presumption that the specified percentage of the supporting parents' income represents an appropriate child support award. *In re Marriage of Burbridge*, 317 Ill. App. 3d 190, 192 (2000). In the case at bar, the child support award was originally set on June 23, 2006, at \$1125 a month from respondent's base salary, as well as 20% of his bonus and commissions received.

¶ 38 Once a child support award has been set, a modification of child support is warranted only upon a showing of a substantial change in circumstances. 750 ILCS 5/510 (West 2010). "Trial courts have wide latitude in determining whether a substantial change has occurred and should consider not only the needs of the child and the financial status of the noncustodial parent, but also the needs and financial status of the custodial parent, the financial resources of the child, the standard of living the child would have enjoyed had the marriage not been dissolved, and the physical, emotional, and educational needs of the child." *In re Marriage of Riegel*, 242 Ill. App. 3d 496, 498-99 (1993) (when considering whether to modify child support payments, trial court may also consider the statutory guidelines set forth in section 5/505 of the Act); 750 ILCS 5/505

(West 2010). A court may presume the cost of raising a child increases as the child grows older. *Riegel*, 242 Ill. App. 3d at 499. Support should be determined by accommodating the needs of the children with the available means of the parties. *Id.* (citing *Ingwerson v. Woeckner*, 141 Ill. App. 3d 647 (1986)).

¶ 39 "The party seeking the modification must show both a change in the children's needs and in the noncustodial parent's ability to pay." *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 105 (2000) (citing *In re Marriage of Pylawka*, 277 Ill. App. 3d 728, 731 (1996), and *Dull v. Dull*, 73 Ill. App. 3d 1015, 1019 (1979)). The modification of child support is within the trial court's discretion and will not be reversed absent an abuse of that discretion. *Sweet*, 316 Ill. App. 3d at 105.

¶ 40 With respect to a change in the minor child's needs, an increase in a child's needs can be presumed on the basis that the child has grown older and the cost of living has risen. *Pylawka*, 277 Ill. App. 3d at 731. Smith stated in her petition for modification that the cost in raising the child had increased due to the child's activities, food, clothing, school-related expenses, transportation, and other housing-related expenses. Respondent contends that the evidence presented at the hearing in the trial court revealed that there was a decrease in the child's needs since 2006. Respondent does not cite to the record for this argument, there is no transcript of the hearing in the record, and the bystander's report does not contain any information pertaining to the cost of caring for the child. There is, however, a disclosure statement from Smith dated December 19, 2005 in the record, which indicates that the total cost of Alec's monthly expenses was \$1237.83 in 2005. In the trial court's November 17, 2011, order, the trial court found that

the current monthly expenses for Alec were \$2194.50, which would support an increase in monthly expenses since the original June 23, 2006, order of child support.

¶ 41 Moreover, an appellant has the burden to present a sufficiently complete record of the trial proceedings to support a claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Without such a record, this court will presume the trial court acted correctly. *Foutch*, 99 Ill. 2d at 392 (as there was no transcript of the hearing on a motion to vacate, there was no basis for holding the trial court abused its discretion in denying the motion). Accordingly, we find that evidence existed for the court to conclude that there had been a substantial change in the child's needs.

¶ 42 With regards to the second element, a substantial change in the noncustodial parent's ability to pay, respondent admits that his earnings have increased every year since the original child support award was set. Therefore, this element has been satisfied. See *Sweet*, 316 Ill. App. 3d at 105 (respondent admitted his earnings had increased every year since he started a business, which satisfied element of changed circumstances of noncustodial parent's ability to pay). Because Smith has shown both a change in the child's needs and the change in respondent's ability to pay, we find that the trial court did not abuse its discretion in modifying the child support award to reflect 20% of respondent's current income.

¶ 43 To the extent that respondent contends that Smith's husband's financial resources should have been considered in making its judgment, we find that they were. The trial court specifically noted in its order that Smith's "spouse has, and the parties do not dispute, a significant income and pays all household expenses." It further noted that it understood that in most cases child-

related expenses included a portion of the underlying costs of a household, but that in this case it was provided at no cost to Smith, and would be so provided without regard to the minor child.

¶ 44 Motion to Reconsider

¶ 45 Respondent's next argument on appeal is that the trial court abused its discretion in granting Smith's motion to reconsider. Smith filed a motion to reconsider the trial court's November 2011, order, arguing that by taking away a percentage of respondent's yearly bonus from the child support award, respondent would only be paying 11% of his net income for child support and that by considering Hall's financial resources, it put the burden to support a child on the non-party. The trial court granted Smith's motion to reconsider and found that respondent will owe Smith 20% of his yearly bonus, but it is to be capped at \$50,000.

¶ 46 A motion to reconsider allows a party to bring before the court newly discovered evidence, changes in the law, or errors in the court's prior application of existing law. *Koczor v. Melnyk*, 407 Ill. App. 3d 994, 1002 (2011). A trial court's ruling on a motion to reconsider will not be overturned absent an abuse of discretion. *Id.* Aside from no review at all, the abuse of discretion standard is the most deferential standard of review. *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 646 (2009). An abuse of discretion occurs when no reasonable person would agree with the position adopted by the trial court. *Sanfratello*, 393 Ill. App. 3d at 646.

¶ 47 In ruling on Smith's motion to reconsider on March 6, 2012, the trial court went through a lengthy discussion of the amount of child support respondent would have to pay depending on his bonuses each year, and concluded that even if respondent did not receive a bonus in a single year, his child support payments would exceed half of Alec's financial needs by \$10,250. The

court stated that it did not have to follow strict statutory guidelines in awarding support. It then went on to state that Smith, as the custodial parent, had no financial needs apart from those met by her current spouse. The court found that the standard of living the child might have had if the parties had stayed together was irrelevant because the parties were never married and also because the standard of living of the two parents was similar. The court found that there was no relevant evidence as to the effect that slightly more or less money would have on the physical and emotional condition of the child or his education needs.

¶ 48 The trial court then modified its November 17, 2011, order to add 20% of respondent's yearly bonus back into the child support award, to be capped at \$50,000. We note that in the case of one child, section 505(a)(1) of the Act specifies that the amount of support shall be 20% of the payor's statutorily defined "net income" which is defined as the "total of all income from all sources." 750 ILCS 5/505(a)(1) (West 2010); 750 ILCS 5/505(a)(3) (West 2010). This would presumably include bonuses. We are not in a position to find that the trial court abused its discretion in this case. It went through the statutory considerations in modifying the child support award, and capped the bonus percentage in order to prevent a windfall to Smith. We cannot say that no reasonable person would agree with the position adopted by the trial court. *Sanfrantello*, 393 Ill. App. 3d at 646.

¶ 49 Contempt and Sanctions

¶ 50 Respondent's final argument is that the trial court erred in holding respondent in contempt and imposing sanctions on him for failing to respond to written discovery and failing to pay certain bonus money to Smith. Respondent claims that the contempt orders of August 6, 2012,



and October 19, 2012, should be vacated. The imposition of sanctions is a matter largely within the discretion of the trial court and will not be disturbed absent an abuse of discretion. *In re Marriage of Daniels*, 240 Ill. App. 3d 314, 323 (1992).

¶ 51 The trial court's August 6, 2012, order notes that a hearing was held on July 17, 2012, on several issues including whether respondent should be held in indirect civil contempt for failing to pay both his 2009 bonus and his 2010 bonus. The transcript of that July 17, 2012, hearing is not in the record. The trial court's order stated that on February 26, 2010, respondent received a bonus for the year 2009 in the gross amount of \$400,000. He neither disclosed that amount by sending a copy of his check to Smith, nor paid 20% of that amount to Smith, both of which would have been due by March 5, 2010. Instead, he filed a motion to modify his child support obligations on March 11, 2010. The trial court found that even if such motion was granted, it would have been retroactive only to March 11, 2010, the date of the filing of his motion, and thus regardless of the outcome of his motion to modify, respondent would still have owed Smith 20% of his bonus.

¶ 52 Furthermore, the trial court noted that on February 15, 2011, respondent received a bonus for 2010 in the gross amount of \$150,000, and neither disclosed the amount of that bonus to Smith, nor paid 20% of that bonus to Smith. As of the court's order on March 6, 2012, respondent owed Smith her share of that bonus money. However, as of the time of the court's order on August 6, 2012, nothing had been paid to Smith. The court found respondent in indirect civil contempt for failing to pay the amounts due.

¶ 53 On October 19, 2012, the trial court heard respondent's motion to reconsider its August 6,

2012, ruling. Respondent claimed that he paid the total bonus amounts due for his 2009 bonus in December of 2011, and that he was therefor not in contempt on August 6, 2012. The trial court noted that it had not necessarily been apprised of what was completely and finally settled and what was still under dispute. It found that if the amounts due were paid, then respondent would not be in contempt of court, but if he had not yet paid what was owed on his 2009 bonus, then he was in contempt.

¶ 54 With respect to respondent's 2010 bonus, the trial court found that as of March 6, 2012, respondent was in indirect civil contempt of court for failure to pay, and that money had still not been paid.

¶ 55 On appeal, respondent claims that during the November 10, 2011, evidentiary hearing, evidence was presented that he had fully complied with his 2009 bonus obligations. Respondent further claims that after the November 17, 2011, order, he satisfied all remaining child support due and outstanding including final bonus money that was due from his 2010 bonus. We first note that there are no record citation to support any of these facts. See Ill. S. Ct. R. 341(h)(7) (appellant's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"). Supreme court rules are not "aspirational" or mere suggestions. *Rodriguez v. Sheriff's Merit Commission of Kane County*, 218 Ill. 2d 342, 353 (2006). Respondent's failure to comply with Rule 341 results in forfeiture of his argument on appeal. *First National Bank of LaGrange v. Lowrey*, 375 Ill. App. 3d 181, 211 (2007).

¶ 56 Furthermore, from what we can see, there is no transcript in the record of the November

10, 2011, evidentiary hearing that respondent is referring to. Moreover, the transcript from the July 17, 2012, hearing on the contempt motions is not included in the record. Accordingly, we have no way of verifying that respondent paid either his 2009 bonus money or his 2010 bonus money. As stated above, the appellant has the burden to present a sufficiently complete record of the trial proceedings to support a claim of error. *Foutch*, 99 Ill. 2d at 391-92. Without such a record, this court will presume the trial court acted correctly and did not abuse its discretion. *Foutch*, 99 Ill. 2d at 392.

¶ 57 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 58 Affirmed.

¶ 59 JUSTICE CUNNINGHAM specially concurs in part and dissents in part:

¶ 60 I respectfully dissent from the holding of the majority affirming the trial court's finding that respondent committed indirect civil contempt for failure to pay Smith a bonus windfall in 2010. I agree that the trial court has the discretion to modify the child support order to reflect 20% of respondent's current salary as well as 20% of his future bonuses to be capped at \$50,000. However, I disagree with the trial court's ruling that respondent was in indirect civil contempt for failure to immediately pay 20% of the unexpectedly large bonus of \$400,000 which he received for the 2009 year in 2010. The bonus was received four years after the original child support order, and was a significant and unexpected increase in respondent's bonus income.

¶ 61 While there are several aspects of the trial court's ruling which I believe is fundamentally unfair to respondent, the most glaring is the court's finding that respondent is in indirect civil

contempt for failure to pay Smith 20% of the unexpectedly large bonus of \$400,000 within seven days of its receipt as outlined in the child support order entered in 2006.

¶ 62 Contempt is a sanction which should be used sparingly. I do not believe there was evidence of willful and contumacious conduct by respondent. The trial court's ruling suggests that it believes that a finding of indirect civil contempt occurs as a matter of law simply because the bonus windfall was not paid within seven days of its receipt, as required by the 2006 child support order. Under the trial court's logic, the only way for respondent to have avoided a contempt finding would have been for him to bring the motion to modify before he got the bonus. Since he did not know that he would receive such a large amount, he could not have filed his motion earlier. Besides, under the trial court's logic nothing would have changed the outcome unless the court ruled on his motion within seven days of when he received the bonus. This clearly is unrealistic and illogical. It does illustrate that under the trial court's reasoning, the only way for respondent to have avoided a contempt finding was to pay the windfall within seven days and hope to recoup the overpayment later.

¶ 63 Upon receiving the significantly increased bonus payment, respondent had the following choices; pay Smith the windfall and then go to court and seek to recover any overpayment; or go to court first and seek guidance from the court before bestowing a windfall on Smith.

Respondent chose to seek the court's guidance first. This seems eminently reasonable and consistent with maintaining an orderly system of justice. It also should have reduced the likelihood of further litigation to recover any windfall improperly paid to Smith. The trial court ultimately agreed with respondent that the original order for payment of 20% of his bonus as

child support was never intended to produce a windfall and unduly enrich Smith.

¶ 64 It is undisputed that the respondent first became aware of the substantial increase in his salary bonus in March 2010. At the time the original child support order was entered in June 2006, the 20% share of his bonus which was payable to Smith as part of his child support obligation was considerably less. Respondent asserts and Smith does not dispute that he annually paid the 20 % of his bonus as ordered by the court until March 2010, when he received the unusually large sum of \$400,000 as bonus for the 2009 year. Upon receipt of the \$400,000 bonus, he did what a reasonable person in his position would do; within days of its receipt, he petitioned the court for relief and guidance regarding the propriety of paying such a large sum. He argued and the trial court and Smith acknowledged that such a large amount had not been contemplated when the original order was entered four years earlier. He correctly pointed out and the court ultimately agreed, that given the significant change in his bonus potential, paying 20% of any bonus amount over \$50,000 would result in an unfair windfall to Smith. In fact, in response to his motion to decrease his payment obligations under the 2006 support order, the trial court initially ruled that Smith was not entitled to any of respondent's bonus payments. However, upon Smith's motion for reconsideration, the court capped the bonus subject to the 20% payment at \$50,000. The record shows that Smith's financial circumstances were on par if not stronger than respondent's. The trial court acknowledged and commented on Smith's comfortable financial circumstances. In fact, the trial court's own calculations demonstrated that without court ordered relief in the percentage of his bonus paid to Smith, respondent would find himself paying several times the actual cost of needed child care sworn to by Smith. This is in addition

to a fairly high standard of living which the trial court acknowledged that Smith enjoys in her current circumstances. Such a windfall is not the purpose of statutorily required child support payments and the trial court recognized as much.

¶ 65 The court thus found that respondent had a legitimate basis for seeking a modification of his child support obligation as related to his bonus. Notwithstanding its ruling that future bonus payments would be capped at \$50,000, the court inexplicably went on to find respondent in indirect civil contempt for failing to pay the bonus windfall to Smith. In my view, litigants should be encouraged to seek the court's guidance as respondent did in this case rather than resort to self help. In this case, respondent was punished for seeking the court's guidance. Since the court ultimately agreed that he was entitled to the relief he sought, it seems fundamentally unfair to find respondent in indirect civil contempt and levy sanctions for failing to comply with an order which the court itself found should be modified. Respondent followed proper procedure as required to change or modify the court's 2006 order. This is especially noteworthy since that order was entered at a time when none of the parties, nor the court contemplated such a large bonus. After finding respondent in indirect civil contempt the court then ordered respondent to pay an amount, plus interest, which by the court's own reasoning was improper.

¶ 66 While I understand that the imposition of sanctions is within the discretion of the trial court; it is also true that a court of review is not simply a rubber stamp for the trial court's discretion. This is particularly so in factual circumstances such as these where the harshness of the trial court's action does not find support in the record nor the conscience.

¶ 67 In my view, the respondent in this case acted appropriately and the judicial system treated

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him unfairly. The trial court's finding of indirect civil contempt is a patent example of exalting form over substance leading to an unfair result. I would reverse the finding of indirect civil contempt and its attendant penalties for failure to pay 20% of the untemplated \$400,000 bonus before seeking a modification of the order entered in 2006.